

FILED

FEB 18 2010

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

**SECRETARY, BOARD OF
OIL, GAS & MINING**

IN THE MATTER OF THE REQUEST FOR :
AGENCY ACTION OF HIAWATHA COAL :
COMPANY, INC., PETITION, FOR :
REVIEW OF THE CESSATION ORDER OF :
THE DIVISION OF GAS, OIL AND MINING :
OF FEBRUARY 5, 2009 FOR THE :
BEAR CANYON MINE :

Docket No. 2009-006
(Consolidated with 2009-007)

Cause No. C/015/025B

HIAWATHA COAL COMPANY, INC.'S
MOTION TO CONTINUE HEARING

COMES NOW Hiawatha Coal Company, Inc., a Utah corporation ("Hiawatha" or "Petitioner") and moves the Board to continue the hearing on the consolidated requests now pending before the Board and scheduled for February 24, 2010 for the following reasons:

1. There are presently two (2) matters pending before the Board arising from two (2) separate requests for review of Division action filed by Hiawatha, *i.e.*, this action (the "First Request") and Action no. 2009-007 (the "Second Request") which were consolidated into the earlier number by this Board's ORDER ON HIAWATHA COAL COMPANY, INC.'S MOTION TO CONSOLIDATE TWO (2) PENDING REQUESTS FOR BOARD ACTION AND TO CONTINUE HEARING PENDING RESOLUTION OF UNDERLYING MATTERS (the "Board's Consolidation Order.")

2. The substance of the First Request (2009-006) is Hiawatha's contention that the Division of Oil, Gas and Mining (the "Division") improvidently or illegally issued its Cessation Order of February 5, 2009 (the "Cessation Order") in violation of the Division's own rules.

3. The substance of the Second Request (2009-007) is Hiawatha's contention

that the April 2, 2009 Decision and the Division's denial of the permit was based upon inaccurate facts and a misunderstanding on the part of the Division of the legal effect of the Bankruptcy Court's "Memorandum Decision" of March 18, 2009 as well as a misunderstanding of the effect of the Memorandum Decision upon the Division.¹ The Memorandum Decision and other bankruptcy court orders were appealed to the Bankruptcy Appellate Panel ("BAP") of the Tenth Circuit Court of Appeals, but the BAP has dismissed the appeal of the Memorandum Decision as interlocutory. Hiawatha is preparing to ask the court for certification under Rule 54(b) and intends to file a new appeal of that decision.

4. The effect of the April 2, 2009 Decision of the Division was that it made moot Hiawatha's request for agency action in the First Request because the arguments in the First Request were based upon the pendency of a complete application before the Division.

5. After several continuances, these consolidated matters were most recently continued to the Board's regularly scheduled meeting on February 24, 2010, again subject to further continuances as the parties may request or as the Board may deem appropriate, primarily because certain underlying disputes then pending in the US Bankruptcy Court remained unresolved.

6. In the meantime, on February 10, 2010, the Bankruptcy Court issued its FINDINGS OF FACT AND CONCLUSIONS OF LAW ARISING FROM TRIAL ON DECEMBER 10, 2009 AND JANUARY 12, 14, AND 19, 2010 (the "Court's Findings.") The Court's Findings contemplate the purchase of the Bear Canyon Mine by the buyer proposed by the Trustee, and the Court directed the Trustee to create a proposed order, which is now under

¹ A number of issues, including Hiawatha's operation of the Bear Canyon Mine have been raised in the US Bankruptcy Court for the District of Utah in a matter styled In re C W Mining and numbered 08-20105 (the "Pending Bankruptcy"), wherein the Memorandum Decision referred to was issued.

consideration by all parties. The Trustee's proposed order, which was filed on the Court docket on February 17, 2010, has already been objected to by all parties except Hiawatha, and Hiawatha will file its objections either today (February 18) or tomorrow (February 19). Once the objections are filed, the Court can either reject the objections and enter the proposed order in its present form; direct the Trustee to prepare another order which incorporates all or any of the objections; or set the matter for hearing. Hiawatha believes it is doubtful that there will be a final order entered by February 24, 2010, the date set for hearing in this matter.

7. Also in the meantime, Hiawatha has been engaged in the process of transitioning the possession of the mine to the Trustee's buyer, which in and of itself involves numerous time-consuming contacts and communications between the Trustee, Price Mine Services (who is providing security for the mine), Norwest (the Trustee's experts) and others involved in the transition process. As a result, both Elliot Finley (the President of Hiawatha) and Charles Reynolds (Hiawatha's mine manager) have been inundated with requests for information; meetings; and other involvement in the transition process and have been unavailable to assist the undersigned in preparing for the scheduled hearing on February 24, 2010. The mine has been idle since approximately July 1, 2009 and is very short-staffed at the present time, which makes it impossible for Messrs. Finley and Reynolds to assign these tasks to others, and as a result they are forced to deal with these matters themselves.

8. The undersigned does not wish to waste the Board's time on February 24, 2010, and believes that the interests of the Board and of the parties will be better served if all concerned are able to present their respective positions in the best possible light rather than without adequate preparation.

WHEREFORE, Hiawatha moves the Board to continue the consolidated matters so that the consolidated matters may be heard and resolved simultaneously, but giving the parties,

and particularly the appealing parties, adequate time to prepare.

A proposed order is submitted concurrently herewith.

Respectfully submitted this 18th day of February, 2010.



Peter W. Guyon, Attorney for Hiawatha

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, first-class postage prepaid, a true and correct copy of the foregoing HIAWATHA COAL COMPANY, INC.'S MOTION TO CONTINUE HEARING to the following on this 18th day of February, 2010:

Hiawatha Coal Company, Inc.
ATTN: Elliot Finley, Pres.
Post Office Box 1240
Huntington, UT 84528
also via email

Lon Jenkins, Esq.
Attorney for Lyndon Insurance
Jones Waldo Holbrook and McDonough
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Prince Yeates & Geldzahler
Attorney for Chapter 7 Trustee
Kenneth A. Rushton
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also via email

Secretary
Board of Oil, Gas and Mining
Utah Division of Oil, Gas & Mining
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Pamela Brown, Forest Supervisor
Forest Service
Manti-La Sal National Forest
599 West Price River Road
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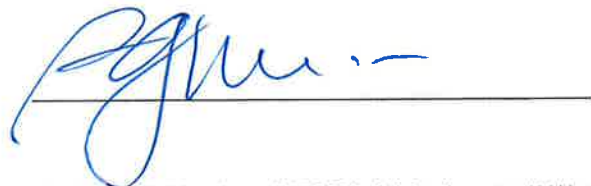
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Kent Hoffman, Deputy State Director
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Michael S. Johnson, Esq.
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Assistan Attorneys General
Utah Board of Oil, Gas & Mining
1594 West North Temple, Suite 300
Salt Lake City, UT 84116

DATED this 18th day of February, 2010.

F. Mark Hansen
Attorney for Joseph Kingston and
Rachel Young
431 North 1300 West
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also via email



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**SECRETARY, BOARD OF
OIL, GAS & MINING**

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
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ORDER ON
HIAWATHA COAL COMPANY, INC.'S
MOTION TO CONTINUE HEARING

Based upon HIAWATHA COAL COMPANY, INC.'S MOTION TO
CONTINUE HEARING and good cause appearing,

IT IS ORDERED that this matter, which is consolidated with No. 2009-007, is
hereby continued to the Board's regularly scheduled meeting on _____,
subject to further continuances as the parties may request or as the Board may deem appropriate.

DATED this ____ day of _____, 2009.

THE BOARD OF OIL GAS AND MINING

By: _____
Douglas E. Johnson, Chair

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, first-class postage prepaid, a true and correct copy of the foregoing ORDER ON HIAWATHA COAL COMPANY, INC.'S MOTION TO CONTINUE HEARING PENDING RESOLUTION OF UNDERLYING MATTERS to the following on this 18th day of February, 2010:

Hiawatha Coal Company, Inc.
ATTN: Elliot Finley, Pres.
Post Office Box 1240
Huntington, UT 84528
also via email

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Secretary
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Prince Yeates & Geldzahler
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Pamela Brown, Forest Supervisor
Forest Service
Manti-La Sal National Forest
599 West Price River Road
Price, UT 84501

Kent Hoffman, Deputy State Director
Bureau of Land Management
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440 West 200 South, Suite 500
Salt Lake City, UT 84101

DATED this 18th day of February, 2010.



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